

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 87 of 1993 (O&M)
Date of Decision : 08.12.2015

New India Assurance Co. Ltd. and anotherAppellants

Versus

Khairati LalRespondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Neeraj Khanna, Advocate
for the appellants.

Mr. Dheeran Narula, Advocate
for the respondent.

Surinder Gupta, J.

This is appeal against award dated 31.07.1992 passed by Motor Accident Claims Tribunal, Sirsa (later referred to as 'the Tribunal') whereby the claim petition filed by Khairati Lal under Section 166 of the Motor Vehicles Act, 1988 was allowed and he was awarded compensation of ₹ 75,000/- for the injuries received by him in a motor accident with Maruti Car No. RNL-276 (later referred to as 'the offending vehicle').

2. The case of claimant, in brief, is that on 27.03.1991 at about 07.45 a.m. he was coming with his son Rakesh Kumar on a scooter from their village Nezadela Kalan to his shop at Barnala Road, Sirsa. Rakesh Kumar was driving the scooter. When they reached near village school a bullock-cart was seen coming from Sirsa side on the *pucca* road. Ram Singh-respondent no. 1 (appellant no. 2 herein) was coming from Sirsa side driving the offending vehicle in a rash and negligent manner at a very high speed. When the scooter and bullock-cart were opposite each

other, Ram Singh tried to cross the scooter and in the process hit the claimant as well as the scooter. The claimant fell on the ground and sustained multiple injuries.

3. Respondents-appellants in their written statement admitted the accident but asserted that it had taken place due to rash and negligent driving of the scooter by Rakesh Kumar who hit his scooter against the stationary car when he lost its control on seeking the bullock-cart from the opposite side. The police had enquired into the matter and found the contention of claimant as false.

4. The Tribunal accepted the plea of claimant and concluded that the accident had taken place on account of rash and negligent driving of the offending vehicle by Ram Singh which hit the scooter resulting in injuries to claimant as a result of which his left leg above the knee joint was amputated.

5. I have heard learned counsel for the parties and perused the paper-book and documents on record with their assistance.

6. Learned counsel for the appellants has argued that Rakesh Kumar, who was driving the scooter on which the claimant was pillion rider, had hit the stationary car, as such, the negligence was of driver of the scooter or at the most it was a case of contributory negligence. In support of his contention that the scooter had hit stationary car he relied on the statement of Ram Singh-respondent no. 1 (appellant no. 2), who appeared as RW-2 and has stated that while coming to Sirsa he had stopped the car on the way at the instance of one Kala Singh who raised a signal.

Rakesh Kumar came from behind on scooter on which the

claimant was a pillion rider. A bullock-cart was coming from opposite side and the scooter driver in order to save himself from bullock-cart applied brakes and in the process lost control of the scooter, which fell on one side and leg of claimant hit the rear right side back light of his car. The claimant was picked up and taken to the hospital at the instance of Rakesh Kumar who got him admitted there.

7. The above statement of respondent no. 1 (appellant no. 2) is beyond his plea that scooter had hit the stationary car. The Tribunal has relied on the testimonies of claimant and his son Rakesh Kumar while reaching the conclusion that accident had taken place on account of rash and negligent driving of the offending vehicle by Ram Singh-respondent no. 1 (appellant no. 2). The mere fact that police found version of claimant as incorrect is no reason to disbelieve the statement of claimant and his son who are eye-witnesses of the occurrence. The police officer who had conducted the enquiry and recorded his conclusion has not appeared as witness to face the cross-examination. Secondly, the material on which he based the conclusion was also not produced before the Tribunal.

8. On perusal of the award I find no legal or factual infirmity therein calling for any interference.

9. The instant appeal has no merits and the same is dismissed.

December 08, 2015
jk

(SURINDER GUPTA)
JUDGE